MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION

OPERATIONAL MEMORANDUM
NO. 11

SUBJECT: STATIONARY SOURCE DETERMINATIONS

EFFECTIVE DATE: June 21, 1996
REVISED: February 14, 1997

EXECUTIVE SUMMARY

This Operational Memorandum was developed in response to numerous Air Quality Division (AQD) staff and regulated community members' requests for clarification on what constitutes a "stationary source." This memorandum elaborates on the definition of the term "stationary source" as found in AQD's proposed rules and provides background information and guidance on the steps involved in making a determination of which components of a facility are required to be included in specific stationary source determinations. The procedural steps in making the determination are as follows:

1. Evaluate the spatial relationships if multiple properties are involved, i.e., are they "adjacent or contiguous?"

2. Evaluate the "control" relationship, i.e., are the entities "under the control of the same person?"

3. Determine the industrial grouping relationship.

PREAMBLE

The term "stationary source" is the common building block upon which all of the various "major source" definitions in the Clean Air Act are founded. However, there are many questions that arise when attempting to determine which specific components associated with a facility actually constitute the stationary source.

Effective December 12, 1996, revisions have been made to Michigan's Rule 119 to provide more detail to clarify the definition by directly incorporating the specific components of U.S. EPA's long-standing interpretation of the term. The revised language adjusts the focus from "process or process equipment" to "building, structures, facilities or installations." It states: "'Stationary source' means all buildings, structures, facilities or installations which emit or have the potential to emit 1 or more air contaminants, which are located at 1 or more contiguous or adjacent properties, which are under the control of the same person, and which have the same 2-digit major group code associated with their primary activity. In addition, a stationary source includes any other buildings, structures, facilities, or installations which emit or have the potential to emit 1 or more air contaminants, which are located at 1 or more contiguous or adjacent properties, which are under the control of the same person, and which have a different 2-digit major group code but which support the primary activity. Buildings, structures, facilities or installations are considered

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to support the primary activity if 50% or more of their output is dedicated to the primary activity. Major group codes and primary activities are described in the standard industrial classification (sic) manual, 1987. Notwithstanding the above, research and development activities, as described in R336.118, may be treated as a separate stationary source, unless the research and development activities support the primary activity of the stationary source."

This operational memorandum is intended to provide background information and guidance on the steps involved in making a determination of which components of a facility are required to be included in a specific stationary source determination.

Policy

In determining whether or not specific components associated with a facility are included in a "stationary source," the steps listed in the procedure below should be followed. If any of the listed criteria do not apply, the entities should be treated as separate stationary sources. When developing a renewable operating permit application pursuant to Michigan's Rule 210, facilities should contact AQD staff as early as possible in the process to determine what constitutes the stationary source if there is any question of interpretation.

Procedure

Step 1: Evaluate the spatial relationship if multiple properties are involved, i.e., are they "adjacent or contiguous?"

Usually, the issue of whether or not properties are adjacent or contiguous is not a concern. However, there are some situations where this issue must be resolved.

The Federal Register of August 7, 1980 (page 52695) states "EPA is unable to say precisely at this point how far apart activities must be in order to be treated separately. The Agency can answer that question only through case-by-case determinations." The Federal Register goes on to explain that if a public right-of-way was the only thing that separated facilities owned and operated by the same owner in the same industrial grouping, then the facilities are one stationary source.

In conclusion, while what are "adjacent properties" must be ascertained on a case-by-case basis, the term typically should be construed to include facilities separated by nothing other than a public right-of-way or similar property right.

Step 2: Evaluate the "control" relationship, i.e., are the entities "under the control of the same person?"

U.S. EPA's permit regulations do not provide a definition for control. Therefore, the common definition is relied upon. Webster's Dictionary defines *control* as "to exercise restraining or directing influence over," "to have power over," "power of authority to guide or manage," and "the regulation of economic activity." Obviously, common ownership constitutes common control; however, common ownership is not the only evidence of control.

U.S. EPA internal documents discuss the control relationship issues and conclude that companies do not typically locate on another's property and do whatever they want. Such relationships are usually governed by contractual, lease, or other agreements that establish how the facilities interact

with one another. Therefore, it is presumed that one company locating on another's land establishes a "control" relationship; however, the existence of such contractual, lease or other agreements do not necessarily constitute "control" in every instance.

U.S. EPA concludes "If after asking the obvious control questions the permit authority has any remaining doubts, it may be necessary to look at contracts, lease agreements, and other relevant information... Our approach to looking at control is based in part on regulatory background information, prior EPA guidance materials, common sense, and limited formal decisions on the matter."

Step 3: Determine the industrial grouping relationship.

a) Do the entities share the same 2-digit major group code associated with the primary activity?

The August 7, 1980 Federal Register states "Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same 'Major Group' (i.e., which have the same two-digit code) as described in the *Standard Industrial Classification Manual*... " This Manual describes Standard Industrial Classification (SIC) as the statistical classification standard underlying all establishment-based Federal economic statistics classified by industry. Each operating establishment is assigned an industry code on the basis of its primary activity, which is determined by its principal product or group of products produced or distributed, or services rendered.

The Federal Register citation and the Manual specify that each source is to be classified according to its primary activity, which is determined by its principal product or group of products produced or distributed, or services rendered.

b) If the entities have different major group codes, to what extent do they support to the primary activity?

The August 7, 1980 Federal Register specifies that "one source classification encompasses both primary and support facilities, even when the latter includes units with a different two-digit SIC code. Support facilities are typically those which convey, store, or otherwise assist in the production of the principle product. Where a single unit is used to support two otherwise distinct sets of activities, the unit is to be included within the source which relies most heavily on its support."

Buildings, structures, facilities, or installations are considered to support the primary activity if at least 50% of their output is dedicated to the primary activity.

As an example, the primary activity at a location is Automobile Assembly. This manufacturing facility includes a foundry (SIC 33), power plant (SIC 49), and assembly plant (SIC 37). They are situated at the same site, under common ownership and the foundry and power plant are used solely to supply the assembly plant. These are all part of one stationary source. If less than 50% of the output of the foundry was dedicated to the auto assembly plant, it would be considered as a separate stationary source. If the power plant supported both the foundry and the assembly plant, it would be considered part of the stationary source that consumes the largest percentage of the power generated.

Also, special evaluations must be made in the case of research and development (R & D) facilities: R&D operations should not generally be considered support facilities, since the "support" provided is directed towards development of new processes or products and not to current production.

Conclusion: If any of the above criteria do not apply, the entities should be treated as separate stationary sources. When developing a renewable operating permit application pursuant to Michigan's Rule 210, facilities should contact AQD staff as early as possible in the process to reach a mutual agreement on what constitutes the stationary source if there is any question of interpretation.

This memorandum is intended to provide guidance to AQD staff to foster consistent application of Part 55 of Act 451 of the Public Acts of 1994, the Natural Resources and Environmental Protection Act and the administrative rules promulgated thereunder. This document is not intended to convey any rights to any parties nor create any duties or responsibilities under law. This document and matters addressed herein are subject to revision.

Questions regarding this memorandum should be directed to Thomas Hess at 517-625-4665.

RSJ:TH:amh